

Subpart E—Legal Proceedings Initiated by the United States Medical Care and Property Claims

§ 516.33 General.

(a) Authorities.

(1) Federal Medical Care Recovery Act (42 U.S.C. 2651). The act provides for the recovery of medical care expenses incurred because of a tortfeasor's actions.

(2) Federal Claims Collection Act (31 U.S.C. 3711). The act provides for the collection of claims for money or property arising from the activities of Federal agencies.

(3) Third-party Collection Program (10 U.S.C. 1095). The statute provides for collection of reasonable costs of health-care services, provided in facilities of the uniformed services to covered beneficiaries, from private insurers or third-party payers. In accordance with DOD Instruction 6010.15, "Third Party Collection (TPC) Program," 7 March 1991, the authority to settle or waive a DOD claim under the act is delegated to TJAG or to his designee.

(4) Executive Order No. 12778, (56 FR 55195; 3 CFR, 1991 Comp. p. 359), Civil Justice Reform. This order establishes several requirements on Federal agencies involved in litigation or contemplating filing an action on behalf of the United States.

(5) AR 27-20, Claims. Chapter 14 (Affirmative Claims) contains comprehensive guidance for Recovery Judge Advocates (RJAs) in the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the U.S. for property damage and for medical care claims.

(b) Duties and Procedures. In accordance with Chapter 14, AR 27-20, Commander, USARCS, has supervisory responsibility over the administrative processing of property and medical care claims by RJAs. The Commander, U.S. Army Health Services Command (HSC), has supervisory responsibility over the Third Party Collection Program (TPCP). The HSC TPCP Implementation Plan effects DOD Instruction 6010.15 and establishes procedures for processing TPC claims. Litigation Division, in conjunction with DOJ and

U.S. Attorneys, is responsible for pursuing, through litigation, claims not resolved administratively. DOJ is ultimately responsible for initiating litigation for the United States. (28 U.S.C. 515).

(c) Assertion of claims on behalf of the United States by private attorneys. The Army incurs potentially recoverable expenses when it provides medical care to soldiers or dependents injured by tortfeasors (for example, a soldier is hospitalized after an automobile accident). When injured personnel employ a private attorney to sue the tortfeasor, it may be in the Government's best interests to enter into an agreement with the private attorney to include the Army's medical care claim.

(d) Statute of limitations. There is a three year statute of limitations for actions in favor of the U.S. for money damages founded upon tort. (28 U.S.C. 2415(b)). Limitations periods can vary, however, depending upon the theory of liability and the jurisdiction involved. RJAs must be alert to the applicable period of limitations. A case referred for litigation should arrive at Litigation Division at least 6 months before the expiration of the limitations period.

(e) Reporting of recoveries. Amounts recovered through litigation will be reported to USARCS by Tort Branch, Litigation Division, or, where referred directly to a U.S. Attorney or the Nationwide Central Intake Facility (NCIF), by the responsible RJA.

§ 516.34 Referral of medical care and property claims for litigation.

(a) *Criteria for referral.* The RJA will forward the claims file and a litigation report (See § 516.35 of this part) through USARCS to Litigation Division when the claim has not been resolved administratively and any of the following conditions exist:

- (1) The claim exceeds \$5,000;
- (2) It involves collection from the injured party or his attorney;
- (3) The claim raises an important question of policy; or,
- (4) There is potential for a significant precedent.

(b) *Alternative methods.* When none of the conditions cited in the preceding subparagraph are present, the RJA